

FILE COPY 72

STATE OF WISCONSIN
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

CUONG KEVIN MAHN PHAM. :
D/B/A TOP NAILS :
RESPONDENTS :

FINAL DECISION AND ORDER
97 BAC 200

LS 98040619BAC

The parties to this action for the purposes of section 227.53 of the Wisconsin statutes are:

Cuong Kevin Mahn Pham
Top Nails
2100 W. North Ave.
Milwaukee, WI 53205

Barbering and Cosmetology Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Top Nails, 2100 W. North Ave., Milwaukee, WI 53205, is duly licensed as a manicuring establishment in the state of Wisconsin (license #1092). This license was first granted on December 17, 1997. Cuong Kevin Mahn Pham is listed with the Department of Regulation and Licensing as the owner of Top Nails. As owner, Mr. Pham was and is at all times relevant to this action responsible for compliance with ch. 454, Stats. and Wisconsin Administrative Code chs. BC 2, 3 and 4.

2. On exact dates unknown, but at least from July 20, 1997 until at least December 12, 1997, Top Nails was open and operating as a manicuring establishment. At no time relevant to this action was Top Nails licensed as a manicuring establishment.

3. On exact dates unknown, but at least on December 12, 1997, Phuong Hoang Ngo was employed at Top Nails to provide manicuring services to the public. At no time relevant to this action did Ms. Ngo hold a valid and current Wisconsin manicurist license.

4. On exact dates unknown, but at least on December 12, 1997, Ong Christina Thi Le was employed at Top Nails to provide manicuring services to the public. At no time relevant to this action did Ms. Le hold a valid and current Wisconsin manicurist license.

5. In resolution of this matter, Mr. Pham consent to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

By the conduct referred to in ¶¶ 2-4, above, Cuong Kevin Mahn Pham, d/b/a Top Nails, violated secs. 454.04 and 454.08, Stats.

ORDER

NOW, THEREFORE, **IT IS HEREBY ORDERED** that Cuong Kevin Mahn Pham, d/b/a Top Nails shall pay to the Department of Regulation and Licensing a forfeiture of THREE HUNDRED dollars (\$300.00). Payments shall be submitted as follows:

\$150.00 due on or before May 15, 1998; and
\$150.00 due on or before June 15, 1998.

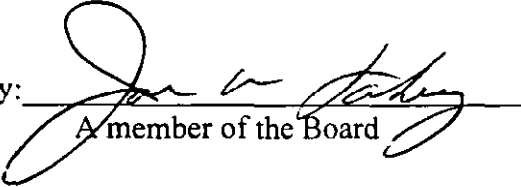
Payments shall be made by *certified check or money order*, payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor
Division of Enforcement
PO Box 8935
Madison, WI 53708-8935

IT IS FURTHER ORDERED that in the event Cuong Kevin Mahn Pham fail to timely submit payment of the forfeiture as set forth above, the establishment license of Top Nails (#1092) **SHALL BE SUSPENDED**, without further notice or hearing, until Respondents have complied with the terms of this Order.

This Order shall become effective upon the date of its signing.

BARBERING AND COSMETOLOGY EXAMINING BOARD

By: 
A member of the Board

4/6/98
Date

STATE OF WISCONSIN
BEFORE THE BARBERING AND
COSMETOLOGY EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST :	:	
	:	
CUONG KEVIN MAHN PHAM,	:	STIPULATION
D/B/A TOP NAILS	:	97 BAC 200
RESPONDENTS.	:	

It is hereby stipulated between Cuong Kevin Mahn Pham, d/b/a Top Nails, personally on his own behalf and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Enforcement (97 BAC 200). Mr. Pham consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Mr. Pham understands that by the signing of this Stipulation he voluntarily and knowingly waive his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. Mr. Pham is aware of his right to seek legal representation and has been provided an opportunity to obtain legal advice prior to signing this stipulation.

4. Mr. Pham agrees to the adoption of the attached Final Decision and Order by the Barbering and Cosmetology Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the attached order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

see - 444

6. The parties to this stipulation agree that the attorney for the Division of Enforcement and the member of the Barbering and Cosmetology Examining Board assigned as an advisor in this investigation may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the Board may have in connection with their deliberations on the stipulation.

7. The Division of Enforcement joins Mr. Pham in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Cuong Kevin Manh Pham
Cuong Kevin Manh Pham
d/b/a Top Nails

3/5/98
Date

Steven M. Gloe
Steven M. Gloe, Attorney
Division of Enforcement

3.5.98
Date

1

Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On April 6, 1998, the Barbering and Cosmetology Examining Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: _____ Case #: _____

The amount of the forfeiture is: \$300.00 Case # LS98040619BAC

Please submit a check or a money order in the amount of \$ (see below)

The costs and/or forfeitures are due: 2 payments of \$150.00 each, due 5/15/98 and 6/15/98

NAME: Cuong Kevin Mahn Pham LICENSE NUMBER: 1092

STREET ADDRESS: 2100 West North Avenue

CITY: Milwaukee STATE: WI ZIP CODE: 53205

Check whether the payment is for costs or for a forfeiture or both:

 COSTS X FORFEITURE

Check whether the payment is for an individual license or an establishment license:

 X INDIVIDUAL ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

For Receipting Use Only

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

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Committed to Equal Opportunity in Employment and Licensing+

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE BARBERING AND COSMETOLOGY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Cuong Kevin Mahn Pham,
d/b/a Top Nails,

AFFIDAVIT OF MAILING


Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On April 14, 1998, I served the Final Decision and Order dated April 6, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS98040619BAC, upon the Respondent Cuong Kevin Mahn Pham, d/b/a Top Nails, by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 159 418.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

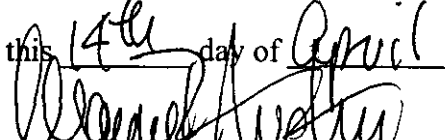
Cuong Kevin Mahn Pham
d/b/a Top Nails
2100 W. North Avenue
Milwaukee WI 53205



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 14th day of April, 1998.



Notary Public, State of Wisconsin

My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: CUONG KEVIN MAHN PHAM, d/b/a TOP NAILS

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 4/14/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN BARBERING AND COSMETOLOGY EXAMINING BOARD
1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935